

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

J. KENNETH KEARNEY USA LTD.,

Plaintiff,

v.

DAVID SMITH,

Defendant.

Civil Action No. 04 CV 12643 RCL

LOCAL RULE 16.1(D)(3) CERTIFICATION

I, Timothy P. Van Dyck, as counsel for the Defendant David Smith, hereby certify pursuant to Local Rule 16.1(D)(3) that I have conferred with my client regarding:

- a) a budget for the costs of conducting the litigation and any alternative courses to the litigation; and
- b) the alternative dispute resolution programs available to the parties pursuant to Local Rule 16.4

David Smith

/s/ Timothy P. Van Dyck
Timothy P. Van Dyck (BBO # 548347)
Edwards & Angell, LLP
101 Federal Street
Boston, MA 02110
617-439-4444

Date: February 9, 2005

CERTIFICATE OF SERVICE

I, Timothy P. Van Dyck, hereby certify that on this 9th day of February, 2005, I caused a copy of the foregoing document to be served upon William A. Zucker, Esq. and Kristin M. Cataldo, Esq. of Gadsby Hannah LLP, 225 Franklin Street, 21st Floor, Boston, MA 02110 by filing the same electronically.

/s/ Timothy P. Van Dyck